U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDIE MOSLEY and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jacksonville, FL

Docket No. 02-1915; Submitted on the Record;
Issued December 19, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

This case has previously been on appeal before the Board. By decision and order dated November 19, 2001, the Board found that the weight of the medical evidence established that the position of modified mailhandler offered to appellant by the employing establishment on October 7, 1996 was suitable, and that the Office properly terminated appellant's compensation effective February 2, 1997 on the basis that he refused an offer of suitable work.[1]

By letter dated December 6, 2001, appellant's attorney requested that the Office reconsider its decision that appellant refused suitable work, and submitted a July 10, 2000 decision from an administrative law judge for the Social Security Administration finding that, since February 28, 1992, appellant had been disabled as defined under the Social Security Act.

By decision dated May 7, 2002, the Office found that appellant had not raised substantive legal questions, that the decision by the Social Security Administration was not relevant, and that appellant's request for reconsideration was insufficient to warrant review of the Office's prior decisions.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

[1] Docket No. 00-1398 (issued November 19, 2001).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[2]

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

The July 10, 2000 decision of an administrative law judge finding that appellant was disabled under the Social Security Act has little evidentiary value in this case because, as the Board has held previously, entitlement to benefits under another act does not establish entitlement to benefits under the Federal Employees' Compensation Act. In determining whether an employee is disabled under the Act, the findings of the Social Security Administration are not determinative of disability under the Act.[6]

The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof on the question of disability. The administrative law judge's determination was based on the regulations under the Social Security Act, which provide that an individual is disabled if his impairments prevent him from performing his past relevant work and from performing other jobs available in significant numbers in the national economy. This determination is not relevant to the findings in the Office's decision that appellant refused an offer of suitable work, as the Office has not found that appellant could perform his previous work or that he could perform jobs available in the national economy. The Office's decision instead found that appellant had refused an offer of a specific limited-duty position at the employing establishment, which is not a position available in the open labor market. The

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.608(b).

[4] *Eugene F. Butler*, 36 ECAB 393 (1984).

[5] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[6] *Daniel Deparini*, 44 ECAB 657 (1993)

July 10, 2000 decision of the administrative law judge for the Social Security Administration has no relevance to the Office's finding that appellant refused an offer of suitable work.[7]

The May 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 19, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] The list of the medical reports considered by the administrative law judge reveals that all the medical evidence considered by the Office was not reviewed in the preparation of the July 10, 2000 decision for the Social Security Administration. Most important is that the report of an impartial medical specialist resolving a conflict of medical opinion on appellant's ability to work.